

R277-200 was approved by the Utah State Board of Education on August 7, 2015. R277-200 is published in the September 1, 2015 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of October 8, 2015.

## **R277. Education, Administration.**

### **R277-200. Utah Professional Practices Advisory Commission (UPPAC), Definitions.**

#### **R277-200-1. Authority and Purpose.**

~~[A-]~~(1) This rule is authorized ~~[under]~~by:

(a) Utah Constitution Article X, Section 3<sub>1</sub> which vests general control and supervision over public education in the Board~~[-]~~<sub>1</sub>

(b) ~~[by]~~Section 53A-6-306<sub>1</sub> which directs the Board to adopt rules regarding UPPAC duties and procedures~~[-]~~<sub>1</sub> and

(c) ~~[by-]~~Subsection 53A-1-401(3)<sub>1</sub> which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-]~~(2) The purpose of this rule is to establish definitions for terms in UPPAC activities.

~~[C-]~~(3) The definitions contained in this rule apply to ~~[r]~~Rules R277-200 through R277-20~~[6]~~<sub>7</sub>. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

#### **R277-200-2. Definitions.**

~~[A]~~(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(~~[2]~~~~[b]~~) "Action" does not include a disciplinary letter.

(~~[3]~~~~[c]~~) "Action" includes:

(~~[a]~~~~[i]~~) a letter of reprimand;

(~~[b]~~~~[ii]~~) probation;

(~~[c]~~~~[iii]~~) suspension; and

(~~[d]~~~~[iv]~~) revocation.

~~[B-]~~(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.

~~[C-]~~(3) "Alcohol related offense" means:

(~~[1]~~~~[a]~~) driving under the influence;

(~~[2]~~~~[b]~~) alcohol-related reckless driving or impaired driving;

(~~[3]~~~~[c]~~) intoxication;

(~~[4]~~~~[d]~~) driving with an open container;

(~~[5]~~~~[e]~~) unlawful sale or supply of alcohol;

(~~[6]~~~~[f]~~) unlawful permitting of consumption of alcohol by minors;

(~~[7]~~~~[g]~~) driving in violation of an alcohol or interlock restriction; and

(8) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections ~~[R277-200-2C(1) through (7)]~~(3)(a) through (g).

~~[D-]~~(4) "Allegation of misconduct" means a written report alleging that an educator:

(~~[1]~~~~[a]~~) has engaged in unprofessional or criminal conduct;

(~~[2]~~~~[b]~~) is unfit for duty;

(~~[3]~~~~[c]~~) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of

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misconduct; or

([4]d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

[E-](5) "Answer" means a written response to a complaint filed by USOE alleging educator misconduct.

[F-](6) "Applicant" means a person seeking:

([1]a) a new license;

([2]b) reinstatement of an expired, surrendered, suspended, or revoked license; or

([3]c) clearance of a criminal background review from USOE at any stage of the licensing process.

[G- "~~Board~~" means the Utah State Board of Education.]

[H-](7) "Chair" means the Chair of UPPAC.

[I-](8) "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

[J-](9) "Complainant" means the Utah State Office of Education.

[K-](10) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators.

[L-](11)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

([2]b) "Conviction" includes:

([a]i) a finding of guilty by a judge or jury;

([b]ii) a guilty or no contest plea;

([c]iii) a plea in abeyance; and

([d]iv) for purposes of this rule, a conviction that has been expunged.

[M-](12) "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

([1]a) a charge revealed by a criminal background check;

([2]b) a charge revealed by a hit as a result of ongoing monitoring; or

([3]c) an educator or applicant's self-disclosure.

[N-](13)(a) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

([2]b) "Disciplinary letter" includes:

([1]i) a letter of admonishment;

([2]ii) a letter of warning; and

([3]iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this [R277-200-2]section.

[O-](14) "Drug" means controlled substance as defined in Section 58-37-2.

[P-](15) "Drug related offense" means any criminal offense under:

([1]a) Title 58, Chapter 37;

([2]b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

([3]c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

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~~([4]d)~~ Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

~~([5]e)~~ Title 58, Chapter 37d, Clandestine Drug Lab Act; and

~~([6]f)~~ Title 58, Chapter 37e, Drug Dealer's Liability Act.

Sections 58-37 through 37e.

~~[Q. "Educator" means a person:~~

~~—— (1) who currently holds a license;~~

~~—— (2) who held a license at the time of an alleged offense;~~

~~—— (3) is a person who is student teaching in anticipation of seeking a license;~~

~~—— (4) is an applicant for a license;~~

~~—— (5) is a licensure candidate through the Alternate Route to Licensure, "ARL," program; or~~

~~—— (6) who has applied to the Alternate Route to Licensure, "ARL" program.]~~

~~[R.](16) "Educator Misconduct" means:~~

~~([1]a) unprofessional or criminal conduct;~~

~~([2]b) conduct that renders an educator unfit for duty; or~~

~~([3]c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.~~

~~[S.](17) "Executive Committee" means a subcommittee of UPPAC consisting of the following members:~~

~~([1]a) Executive Secretary;~~

~~([2]b) Chair;~~

~~([3]c) Vice-Chair; and~~

~~([4]d) one member of UPPAC at large.~~

~~[T.](18) "Executive Secretary" means an employee of USOE who:~~

~~([1]a) is appointed by the State Superintendent of Public Instruction to serve as the UPPAC Director; and~~

~~([2]b) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302.~~

~~[U.](19) "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under Section R277-516-3.~~

~~[V.](20) "Expedited Hearing Panel" means a panel of the following three members:~~

~~([1]a) the Executive Secretary;~~

~~([2]b) a voting member of UPPAC; and~~

~~([3]c) a UPPAC prosecutor.~~

~~[W.](21) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.~~

~~[X.](22) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~[Y.](23) "Hearing officer" means a licensed attorney who:~~

~~([1]a) is experienced in matters relating to administrative procedures;~~

~~([2]b) is appointed by the Executive Secretary to manage the proceedings of a~~

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hearing;

([3]c) is not an acting member of UPPAC;

([4]d) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and

(5) does not have a vote as to the recommended disposition of a case.

~~[Z-]~~(24) "Hearing panel" means a panel of three or more individuals designated to:

([1]a) hear evidence presented at a hearing;

([2]b) make a recommendation to UPPAC as to disposition; and

([3]c) collaborate with the hearing officer in preparing a hearing report.

~~[AA-]~~(25) "Hearing report" means a report that:

([1]a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

([2]b) includes:

([a]i) a recommended disposition;

([b]ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

([c]iii) applicable law and rule.

~~[BB-]~~(26) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

~~[CC-]~~(27) "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:

([1]a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

([2]b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

([3]c) provides an independent investigative report for UPPAC and the Board; and

([4]d) may also be the prosecutor but does not have to be.

~~[DD-]~~(28) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

([1]a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

([2]b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

([3]c) is maintained in the UPPAC Case File; and

([4]d) is classified as protected under Subsection 63G-2-305(34).

~~[EE-]~~(29) "LEA" or "local education agency" ~~[means a school district, charter school or,]~~ for purposes of this rule[,] includes the Utah Schools for the Deaf and the Blind.

~~[FF-]~~(30) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

~~[GG-]~~(31) "Letter of reprimand" is a letter sent by the Board to an educator:

([1]a) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;

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([2]b) that provides specific directives to the educator as a condition for removal of the letter;

([3]c) appears as a notation on the educator's CACTUS file; and

([4]d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

[HH-](32) "Letter of warning" is a letter sent by the Board to an educator:

([1]a) for misconduct that was inappropriate or unethical; and

([2]b) that does not warrant longer term or more serious discipline.

[H-](33) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

[JJ-](34) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

[KK-](35) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

[LL-](36) "Notification of Alleged Educator Misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

[MM-](37) "Party" means a complainant or a respondent.

[NN-](38) "Petitioner" means an individual seeking:

([1]a) an educator license following a denial of a license;

([2]b) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.

[OO-](39) "Probation" is an action directed by the Board that:

([1]a) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;

([2]b) may require the educator to be subject to additional monitoring by an identified person or entity;

([3]c) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;

([4]d) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and

([5]e) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.

[PP-](40) "Prosecutor" means an attorney who:

([1]a) is designated by the Superintendent to represent the complainant and present evidence in support of the complaint; and

([2]b) may also be the investigator, but does not have to be.

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~~[QQ-]~~(41) “Revocation” means a permanent invalidation of a Utah educator license consistent with Rule R277-517.

~~[RR-]~~(42) “Respondent” means an educator against whom:

(~~[1]~~a) a complaint is filed; or

(~~[2]~~b) an investigation is undertaken.

~~[SS-]~~(43) “Serve” or “service,” as used to refer to the provision of notice to a person, means:

(~~[1]~~a) delivery of a written document or its contents to the person or persons in question; and

(~~[2]~~b) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

(44) “Sexually explicit conduct” means the same as that term is defined in Section 76-5b-103.

~~[TT-]~~(45) “Stipulated agreement” means an agreement between a respondent and the Board:

(~~[1]~~a) under which disciplinary action is taken against the educator in lieu of a hearing;

(~~[2]~~b) that may be negotiated between the parties and becomes binding:

(~~[a]~~i) when approved by the Board; and

(~~[b]~~ii) at any time after an investigative letter has been sent;

(~~[3]~~c) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.

~~[UU- “Superintendent” means the State Superintendent of Public Instruction or the Superintendent’s designee.]~~

~~[VV-]~~(~~[1]~~46)(a) “Suspension” means an invalidation of a Utah educator license.

(~~[2]~~b) “Suspension” may:

(~~[a]~~i) include specific conditions that an educator must satisfy; and

(~~[b]~~ii) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.

~~[WW-]~~(47) “Utah Professional Practices Advisory Commission” or “~~[f]UPPAC[f]~~” means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

~~[XX-]~~(48) “UPPAC Background Check File” means a file maintained securely by UPPAC on a criminal background review that:

(~~[1]~~a) contains information obtained from:

(~~[a]~~i) BCI; and

(~~[b]~~ii) letters, police reports, court documents, and other materials as provided by an educator; and

(~~[2]~~b) is classified as private under Subsection 63G-2-302(2).

~~[YY-]~~(49) “UPPAC Case File” means a file:

(~~[1]~~a) maintained securely by UPPAC on an investigation into educator misconduct;

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([2]b) opened following UPPAC's direction to investigate alleged misconduct;  
([3]c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

([4]d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

([5]e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

~~[ZZ-]~~(50) "UPPAC Evidence File" means a file:

([1]a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

([2]b) that contains correspondence between the Investigator and the educator or the educator's counsel;

([3]c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

([4]d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

~~[AAA-]~~(51) "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.

~~[BBB-]~~(52) "UPPAC Prosecutor File" means a file:

([1]a) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:

([a]i) the attorney's notes prepared in the course of investigation; and

([b]ii) other documents prepared by the attorney in anticipation of an eventual hearing; and

([2]b) that is classified as protected pursuant to Subsection 63G-2-305(18).

~~[CCC- "USOE" means the Utah State Office of Education.]~~

**KEY: professional practices, definitions, educators**

**Date of Enactment or Last Substantive Amendment: ~~[July 8,]~~2015**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)**